IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE S.SIRI JAGAN

WEDNESDAY, THE 7TH MARCH 2007 / 16TH PHALGUNA 1928

OP.No. 31289 of 1999(Y)

PETITIONER:
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1. **P.UNNIKRISHNAN,**
   JUNIOR EXECUTIVE , K.S.F.E.,
   HEAD OFFICE, THRISSUR.

2. **THANKAPPAN C.R.,**
   JUNIOR EXECUTIVE , K.S.F.E.
   H.P.UNIT, ERNAKULAM.

BY ADV. SRI.T.A.SHAJI
SMT.P.M.INDU

RESPONDENTS:
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1. **THE KERALA STATE FINANCIAL ENTERPRISES LTD.,**
   "BHADRATHA", P.B.NO.510, MUAWUM Eos,
   THRISSUR – 680020 REP.BY ITS
   MANAGING DIRECTOR.

2. **STATE OF KERALA REP.BY THE SPECIAL**
   SECRETARY TO GOVERNMENT,
   TAXES(H) DEPARTMENT,
   GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM.

BY ADV. SRI. K.K.NANDAKUMAR

THIS ORIGINAL PETITION HAVING COME UP FOR ADMISSION ON 07/03/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

S. SIRI JAGAN, J.

O.P.NO. 31289 OF 1999

DATED THIS THE 7th DAY OF MARCH, 2007

JUDGMENT

The petitioners are Junior Executives in the 1st respondent Government Company. They are aggrieved by Ext.P1 notification issued by the 1st respondent inviting applications to the two posts of Senior Manger – EDP, in which the qualifications stated are not the one which are obtaining in the recruitment rules framed by the Company. According to the petitioners a proposal for amendment of the rules have been framed by the Company and only forwarded to the Government and Public Service Commission for approval. The petitioners would submit that unless the approval is granted by the Government and the Public Service Commission, those amended recruitment rules cannot be implemented so as to make appointments to the vacant posts based on the proposed qualifications. In the above circumstances, they are sought the following reliefs in this original petition.

> "i. issue a writ of certiorari or any other writ, order or direction quashing all proceedings in pursuance of Ext.P1.
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> ii. issue a writ of certiorari quashing the appointments already made to the post of E.D.P.

Manager in the cadre of Senior Manager;

iii) issue a writ of prohibition or any other writ order or direction restraining the 1st respondent from making any appointment to the post of EDP Mangers in the cadre of Senior Mangers till the Recruitment Rules are properly amended and approval obtained from the Government as also from the Public Service Commission;

iv) issue such other writ, direction or order as this Hon'ble Court deem fit and proper to be granted in the facts and circumstances of the case including the costs of the petitioners."

2. First respondent has filed a counter affidavit in which he has stated that in view of the exigencies of service it has been decided to introduce computerization in key areas of administration for which it became necessary to have personnel qualified in handling of computers and therefore in respect of direct recruitment to the post of Senior Managers, an amendment to the qualifications has been approved by the Board of Directors including an additional qualification of experience in supervisory capacity in E.D.P. Department of Government/Industrial/Commercial undertaking or a concern registered under the Indian Company's Act. Since there was urgency to fill up the posts and it would take time to get formal approval from the Government and Public Service Commission, in anticipation of such approval, the amendment has been implemented and it is pursuant thereto, Ext.P1 notification inviting

applications to the two posts of Senior Managers – EDP has been published. The 1st respondent contend that it is purely in the exigencies of service that this step has been taken failing which the process of computerization of the key areas of administration would come to a stand still and in this age of computerization, the 1st respondent would not be able to cope up with the demands of the time. The learned counsel for the 1st respondent would specifically point out that the petitioners or any of the employees in service would not in any way be affected by such recruitment since these vacancies form part of the 25% quota reserved for direct recruitment to which none of the employees of the 1st respondent can aspire for promotion. He has specifically invited my attention to Ext.R1(b) letter from the petitioner to the Government of Kerala wherein it has been specifically stated that as per the recruitment Rules in the Company, 25% of the vacancies in the cadre of Senior Manager Gr.II have to be filled up by direct recruitment from open market. At the relevant time there were 23 vacancies of Senior Managers to be filled up by direct recruitment. The learned counsel for the respondents therefore would submit that the petitioners have embarked on a futile exercise and it is settled law that this court shall not issue futile writs.

3. I have considered the rival contentions in detail. The learned counsel for the petitioners could not controvert the fact that as per the recruitment rules of the Company 25% of the vacancies

in the cadre of Senior Manager have to be filled up by direct recruitment. They have no case that the vacancies now advertised by Ext.P1 for direct recruitment are not posts earmarked for direct recruitment. They also have no case that they are entitled to be considered for promotion to those vacant posts covered by Ext.P1.

4. It is submitted before me that since there was no specific stay order from this Court against recruitment, pursuant to Ext.P1 one person has been appointed from the select list pursuant to Ext.P1 and he has been working as such since 1999. In so far as the petitioners or any of the existing employees of the 1st respondent would not in any way be affected by the recruitment pursuant to Ext.P1, as the recruitment is to the vacancies specifically earmarked for direct recruitment, I am not inclined to exercise my discretionary jurisdiction under Article 226 of the Constitution of India in this case.

5. Further in this modern age of computerization I feel that the management should be given some leeway in the matter of amendment of recruitment rules and filling up of the same in anticipation of the approval by the Government. In this connection I note that in Ext.R1(b), the decisions to introduce computerization in key areas were taken based on the consensus reached in the discussion held between management and trade unions on 10.5.1995, in the presence of Hon'ble Finance Minister of Kerala. The result of setting aside of such appointment made pursuant to

Ext.P1 would cause total dislocation and a set back to the process of computerization without any corresponding advantage either to the petitioners or any of the other employees of the Company who may aspire for promotion to the post of Senior Manager. This is so because the employees of the 1st respondent who aspire for promotion to the post of Senior Manager can only so aspire to vacancies which are earmarked for appointment by promotion and not to those specifically earmarked for direct recruitment. From the pleadings before me it is evident that the petitioners have no case that the two posts to which the applications were invited by Ext.P1, are vacancies, which can be filled up by promotion from among the eligible employees of the 1st respondent. On the other hand they are exclusively reserved for direct recruitment in the 25% quota fixed by recruitment rules. That being so, in the absence of any possible grievance to the petitioner in the matter, I am not inclined to consider the claims of the petitioner against the appointment on the proposed amendment to the recruitment rules even assuming that the same is till pending approval by the Government. Accordingly, the original petition is dismissed.

S. SIRI JAGAN, JUDGE

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